

REPRESENTATIVE FOR PETITIONER:

Jonathon T. Cook, Attorney

REPRESENTATIVE FOR RESPONDENT:

Brian A. Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MCCLAIN MUSEUM, INC.,)	Petition Nos.: See attached listing
)	
Petitioner,)	Parcel Nos.: See attached listing
)	
v.)	
)	Madison County
MADISON COUNTY)	
ASSESSOR,)	Lafayette Township
)	
Respondent.)	Assessment Year 2014

Appeal from the Final Determination of the
Madison County Property Tax Assessment Board of Appeals

November 21, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

ISSUE

1. Was the property under appeal, or a portion thereof, exempt from property taxation because it was owned, occupied, and used by Petitioner for exempt charitable or educational purposes?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JURISDICTIONAL FRAMEWORK

2. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PROCEDURAL HISTORY

3. All of the real property parcels and the personal property under appeal are located at 2304 Crystal Street in Anderson.
4. On May 13, 2014, Petitioner filed 11 exemption applications, one for each of ten real property parcels and one for personal property, claiming it used the property for educational purposes. On October 7, 2014, the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying all 11 applications. Consequently, Petitioner filed its Form 132 Petitions for Review of Exemption (“Forms 132”) with the Board.
5. There is dispute about the assessment year or years before us. Although the Form 132 Petitions To The Indiana Board Of Tax Review For Review Of Exemption stated that the year under appeal was 2012-2014, when the petitions were filed, the Board regarded this matter as an appeal of the PTABOA’s denials of exemption for only 2014 because the attached documentation only showed the PTABOA had denied exemption for 2014. Form 132 specifically states, “A copy of the underlying Application for Exemption (...Form 136), and a copy of the Notice of Action on Exemption (...Form 120) must be attached to this petition.” Here the attached Form 136 indicates that Melissa McClain signed it on May 13, 2014. Form 136 has two places where the assessment date is

supposed to be supplied, but she left both of those places blank. *Contrary to the cover letter Mr. Cook sent to the IBTR, none of the enclosures show a Form 136 for 2012, 2013 or 2015.* The Board’s hearing notices all indicated the hearing was for 2014. At the hearing, however, counsel for both parties said they agreed this appeal would be for years 2012 through 2015. They said exemption applications had been filed for those years, but those applications had never been acted upon by the PTABOA; however, no documentation to support this point was submitted. In spite of the parties’ attempt to include additional years by agreement, the Board will confine this determination to the exemption claim for 2014 because that is what the record shows was denied by the PTABOA on or about October 7, 2014, and that is what our hearing notice indicated. To the extent that the parties agreed our determination would apply to years 2012, 2013 and 2015, the Board makes no determination about the validity or enforceability of that agreement.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. On June 11, 2015, the Board’s Administrative Law Judge, Joseph Stanford (“ALJ”), held a hearing on this case. Neither the Board nor the ALJ inspected the subject property.
7. Attorney Jonathon Cook represented Petitioner. Attorney Brian Cusimano represented Respondent. Joseph McClain, Melissa McClain, and John L. Krieg were sworn as witnesses for Petitioner. Respondent did not call any witnesses.
8. Petitioner submitted the following exhibits:

Petitioner Exhibit 1:	Mission Statement; Certificate of Incorporation; Articles of Incorporation; Bylaws
Petitioner Exhibit 2:	Joseph McClain’s letter of resignation as the President of the Board of Directors, dated December 12, 2013; minutes of the 2012 and 2013 annual Board of Directors meetings
Petitioner Exhibit 3:	Letter from the IRS, dated September 26, 1996
Petitioner Exhibit 4:	State Board of Tax Commissioners’ decision in <i>McClain Museum Inc./Joseph F. McClain v. Madison County Board of Review</i> , State Bd. of Tax Comm’rs Pet. No. 48-003-96-2-8-00029 (December 11, 2001)
Petitioner Exhibit 5:	Supervised Entity List

Petitioner Exhibit 6:	Letters from Chief Samuel Weist of the Markleville Police Department, Tom Bannon of the Madison County Visitors Bureau, Lani Ropkey of the Ropkey Armor Museum, Jim Osborne of the Indiana Military Museum, attorney Frederick Spencer, and Indiana Governor Michael Pence
Petitioner Exhibit 7:	Requests for Issue or Turn-In; Conditional Deed of Gift
Petitioner Exhibit 8:	Drawing of subject property prepared by Melissa McClain
Petitioner Exhibit 9 (1-190):	One hundred ninety (190) interior and exterior photographs of the property
Petitioner Exhibit 10:	2013-2014 boat storage ledger; 2014-2015 boat storage contracts (Confidential) ¹
Petitioner Exhibit 11:	2012-2014 Yellowbook storage contracts and related documentation (Confidential)
Petitioner Exhibit 12:	2012-2014 Officers' Club contracts (Confidential)
Petitioner Exhibit 13:	2012-2014 financial statements (Confidential)
Petitioner Exhibit 14:	2012 and 2013 IRS Form 990-EZ return summaries (Confidential)
Petitioner Exhibit 15:	2012-2014 advertisements with the Anderson/Madison County Visitors Bureau and related documentation
Petitioner Exhibit 16:	2014 advertisement with "Bride to Be" and related documentation
Petitioner Exhibit 17:	2014 advertisement in the Yellow Pages and related documentation
Petitioner Exhibit 18:	Photographs of Military Museum signs
Petitioner Exhibit 19:	2012-2014 Officers' Club expenses; 2013 and 2014 electric bills (Confidential)
Petitioner Exhibit 20:	2014 property record cards for Paramount Heritage Foundation, Madison County Historical Society, and Anderson Fine Arts Center
Petitioner Exhibit 21:	Listing of the museum's regular hours of operation and group tours conducted from March 2014 through September 2014
Petitioner Exhibit 22:	Volunteer roster
Petitioner Exhibit 23:	Letters from Dan Dykes, County Administrator

9. Respondent submitted the following exhibits:

Respondent Exhibit A1:	2012 financial statements (Confidential)
Respondent Exhibit A2:	2013 financial statements (Confidential)
Respondent Exhibit A3:	2014 financial statements (Confidential)
Respondent Exhibit B1:	2012 IRS Form 990-EZ return summary (Confidential)

¹ Petitioner did not specifically identify any of its evidence as confidential. Respondent, however, submitted many of the same documents as Petitioner and marked certain financial statements, contracts, and federal tax documents as confidential. In the instances where both parties submitted the same document as an exhibit and Respondent marked it as confidential, the Board will treat both of the duplicate exhibits as confidential.

Respondent Exhibit B2:	2013 IRS Form 990-EZ return summary (Confidential)
Respondent Exhibit C:	Certificate of Incorporation; Articles of Incorporation
Respondent Exhibit D:	Mission Statement
Respondent Exhibit E:	Museum's hours of operation
Respondent Exhibit F:	Listing of the museum's regular hours of operation and group tours conducted from March 2014 through September 2014
Respondent Exhibit G1:	2013-2014 boat storage ledger (Confidential)
Respondent Exhibit G2:	2014-2015 boat storage ledger and contract (Confidential)
Respondent Exhibit H1:	2012 Officers' Club ledger, statement of services, and contract (Confidential)
Respondent Exhibit H2:	2013 Officers' Club ledger, statement of services, and contract (Confidential)
Respondent Exhibit H3:	2014 Officers' Club ledger, statement of services, and contract (Confidential)
Respondent Exhibit I1:	2014 advertisement in the Yellow Pages and related documentation
Respondent Exhibit I2:	2014 advertisement with "Bride to Be" and related documentation
Respondent Exhibit J:	2012-2014 Yellowbook storage contracts and related documentation (Confidential)
Respondent Exhibit K:	Drawing of subject property prepared by Melissa McClain with numbers 1-8 added to the building's interior sections by the Respondent
Respondent Exhibits K1-K9:	Nine (9) interior photographs of the property
Respondent Exhibit L1:	Geographic Information System (GIS) aerial photograph of property
Respondent Exhibit L2:	GIS aerial photograph of property

10. The following items are officially recognized as part of the record of proceedings:

Board Exhibit A:	Form 132 petitions and attachments
Board Exhibit B:	Hearing notices
Board Exhibit C:	Hearing sign-in sheet

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

11. The PTABOA determined that the subject property is 100% taxable for 2014.

12. Petitioner claims that all of its land, improvements, and personal property are entitled to 100% exemption.

SUMMARY OF PETITIONER'S CASE

13. Petitioner is an Indiana not-for-profit corporation established in February 1989. The organization is tax-exempt under Section 501(c) (3) of the Internal Revenue Code. *J. McClain testimony; Pet'r Exs. 1, 3.*
14. The parcels at issue cover approximately 15 acres and contain two significant improvements, one large building partitioned into several distinct areas, and another small building. Together both buildings have a total of approximately 94,000 square feet. A perimeter fence along a portion of the property's northern, eastern, and southern boundaries appears to cross into at least five other wooded, contiguous parcels. A parking lot that services the large main building is located on the southwest corner of the property. The rest of the property is wooded and unimproved. *J. McClain testimony; M. McClain testimony; Krieg testimony; Pet'r Ex. 8; See Resp't Exs. L1, L2.*
15. Petitioner contends that its mission is to "collect, preserve, and interpret" historically significant retired United States military items. According to Mr. McClain, Petitioner restores and exhibits equipment, armor, weapons, vehicles, and other memorabilia in the area of the property used as a museum. He testified that the museum offers guided tours and programs for the public, and "provide[s] research assistance to the public and scholars." According to Mr. McClain, Petitioner also collects and exhibits vehicles and memorabilia that have significance to Anderson and Madison County. *J. McClain testimony; Pet'r Ex. 1.*
16. Petitioner claims the property is predominantly used as a military equipment war museum, even though other activities also occur in some areas. According to Petitioner, approximately 23,000 square feet of the building is used to display military equipment. Admission is free. The museum is open to the public on Wednesday, Thursday, and Friday from 1 p.m. to 4 p.m. Guided tours are available by appointment. *J. McClain testimony; M. McClain testimony; Krieg testimony; Pet'r Ex. 8; Resp't Ex. E.*

17. John Krieg is the facilities manager. He is paid, but also is allowed to reside at the facility without paying rent. (The record fails to indicate what part of the property is used for that purpose or to supply any further details about that particular use.) Mr. Krieg is knowledgeable about the mechanics and uses of the equipment on display. About a dozen times a year he guides tours and explains in detail the purposes of the equipment as well as the era and wars in which it was used. Signs and plaques describe the items for unguided tours. Groups that have visited the museum for guided tours include home-school groups, Boy Scouts, and veterans, but Petitioner keeps few records of the number of visitors or the type of groups visiting, especially for the unguided tours. On the Petitioner's financial information, the amount identified as "tour admittance" also includes the receipts from boat storage and yellow book storage. *J. McClain testimony; M. McClain testimony, Krieg testimony; Pet'r Exs. 9, 13, 21.*

18. Mr. McClain personally bought this real property in 1986 or 1987. Prior to incorporating the museum in 1989, Mr. McClain had rebuilt two tanks, a couple of trucks and "stuff." He owned items that he loaned to the museum. Those items were his own property. He subsequently moved those items out—"Five or six years ago I took my collection out and went to Florida." Although he is not sure about the number of items he took, it amounted to "quite a few" of the exhibits that had been on display at the museum. Other display items are either on loan from the United States Government or donated by individuals. Petitioner repairs and restores the military equipment. The property has several maintenance and storage areas. According to Petitioner, a 6,300 square-foot garage is used as a "restoration area," and a 37,000 square-foot area is used for museum storage and offices. The office space includes an area with approximately 200 books and manuals about maintenance for the military equipment on hand. Items not on display are stored or being restored. Petitioner rotates the exhibits periodically. *J. McClain testimony; Krieg testimony; Pet'r Exs. 7, 8, 9.*

19. Mr. Krieg and some volunteers perform "reenactments." In doing so, Mr. Krieg generally takes a military vehicle, or equipment owned by volunteers, and performs

scenarios that might have occurred during a war. These reenactments generally are open to the public. *Krieg testimony*.

20. Petitioner occasionally donates the use of the subject property. For example, police departments occasionally use either the inside of the building or the land behind the building to train their dogs. This use is on an informal basis—there is no record of how many police departments have done it or how often it occurs. Petitioner also partners with the Anderson County Historical Society and uses approximately 1,100 square feet of space to house displays for which the Historical Society does not have room. *J. McClain testimony; M. McClain testimony; Krieg testimony; Pet'r Ex. 8*.
21. Petitioner admits the subject property is used for various other purposes, but argues that these uses are incidental. One such use is boat storage. From approximately October through April, about 8,600 square feet is used for boat owners to store their boats for the winter. The boat owners sign an agreement to lease space, but the agreement specifically states that if this space is needed for museum storage at any time, the owners must remove their boats. The boat storage area constitutes approximately 9% of the improvements (approximately 8,600 square feet out of 94,000 square feet). Furthermore, because not all boat owners store their boats in the space for the entire winter, Petitioner contends the average total space used during these months is less than 8,600 square feet. *Cook argument; J. McClain testimony; M. McClain testimony; Pet'r Exs. 8, 10*.
22. Approximately 14,500 square feet is an event center known as the “Officers’ Club.” It was established in 2003. It is used approximately 50 days per year for events such as wedding receptions, class reunions, graduation events, and birthday parties. Occasionally this space is donated for political fund-raisers. This area is 15.5% (14,500 square feet out of 94,000 square feet) of the total improvement space. *J. McClain testimony; M. McClain testimony; Krieg testimony; Pet'r Exs. 8, 12, 15, 16, 17*.
23. A small area in the Officers’ Club is used to store Yellowbook telephone books. This use is only for one or two months out of the year. *M. McClain testimony; Pet'r Ex. 11*.

24. Petitioner claims only 24.5% of the improvement space was used for purposes other than the museum. Accordingly, Petitioner argues that the property is generally used for the exempt purposes based on total space. *Cook argument; Pet'r Findings & Conclusions* at 13.
25. Petitioner makes a similar argument about the time the subject property is used for each purpose. Petitioner claims the museum portion is used all of the time for that purpose. It is open to the public nine hours per week, and any time by appointment. And even when the display area is closed to the public, that area still is used as storage for the equipment on display. The Officers' Club is only used 50 days per year. Phone books are stored for only eight weeks per year. Boats are stored for a maximum of seven months per year. Thus, the majority of time the building is used is for the museum. *J. McClain, M. McClain, Krieg testimony; Pet'r Exs. 10, 11, 12; Pet'r Findings & Conclusions* at 13, 14.
26. Based on an analysis of the income, Petitioner argues that the overall use of the property is for the museum. Petitioner's total income in 2012 was \$64,986. In 2013 it was \$56,059. And in 2014 it was \$125,607. The income derived from boat storage is not precisely known, but was estimated to be 7.7% of total income in 2012 (\$5,000 out of \$64,986), 8.7% in 2013 (\$4,916 out of \$56,059), and 3.9% in 2014 (\$5,000 out of \$125,607).² The share of income from Yellowbook storage was 1.6% in 2012 (\$1,100 out of \$64,986), 1.9% in 2013 (\$1,100 out of \$56,059), and 0.9% in 2014 (\$1,150 out of \$125,607). The share of income from the Officers' Club was 25.9% in 2012 (\$16,873 out of \$64,986), 19.7% in 2013 (\$11,062 out of \$56,059), and 8% in 2014 (\$10,147 out of \$125,607). *M. McClain testimony; Pet'r Exs. 10, 11, 13; Pet'r Findings & Conclusions* at 11, 12.
27. Petitioner's remaining income was donations from patrons, the public, and Joseph McClain. The majority of income was from donations. The donations were \$42,013

² For 2013, the boat rental income of \$4,916 is actual income. The 2012 and 2014 amounts are estimated based on an annual average of \$5,000.

(64.6%) in 2012, \$38,981 (69.5%) in 2013, and \$109,310 (87%) in 2014. *M. McClain testimony; Pet'r Ex. 13; Pet'r Findings & Conclusions* at 12.

28. Petitioner contends the use of the subject property is educational because it supplements history classes and other subjects taught at local schools. And it claims that according to the Indiana Tax Court, a museum can provide educational training. According to Petitioner, this museum expands on state-funded elementary and secondary schools' teaching about wars involving the United States—wars take center stage in teaching history and are a part of subjects such as economics, American literature, philosophy, and political science. *Pet'r Findings & Conclusions* at 20 (citing *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996); *Pet'r Brief* at 18).
29. Petitioner argues the museum provides the required “relief to some limited extent” to tax-supported schools. An educational use does not require a classroom, classes, or programs that are identical to those of tax-supported schools. That is precisely why many of the locally tax-supported schools take field trips to area art museums and children's museums, among other destinations. According to Petitioner, seeing, touching, and learning about the museum's exhibits supplements learning about history, the military, and various wars. *Pet'r Findings & Conclusions* at 21, 22 (citing *Trinity School of Natural Health, Inc. v. Kosciusko Cnty. Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003); *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 221-22).
30. Petitioner also argues that the subject property qualifies as exempt for charitable purposes. Petitioner contends that it is relieving the government of an obligation and a cost that it would otherwise be required to fill because Petitioner stores and displays equipment that the U.S. government would otherwise have to either store or dismantle for scrap metal with significant cost to taxpayers. According to Petitioner, there is a public benefit, which is saving taxpayer money. *Pet'r Findings & Conclusions* at 15, 16 (citing *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 222; *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct.

1990); *St. Mary's Medical Center of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989) (aff'd 571 N.E.2d 1247 (Ind. 1991)).

31. While Petitioner acknowledges that there is no intrinsic “human need” for preserving historical military items, Petitioner contends it fulfills a “human want,” which is the desire of the public to preserve history. For example, veterans have toured the museum and, as a result, have felt more able to talk about their experiences. Petitioner contends that its use of the subject property is clearly “different from the everyday purposes and activities of man in general.” *J. McClain testimony; Pet'r Findings & Conclusions* at 16, 17 (citing *College Corner, L.P. v. Dep't of Local Gov't Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006)).
32. Finally, Petitioner contends that the benefit received by the public from its activities is sufficient to justify the loss in tax revenue. While the amount of annual tax revenue Respondent seeks from Petitioner is approximately \$20,000, Petitioner's expenses from 2012-2014 related to securing, shipping, preserving, and maintaining the equipment were around \$80,000. On an annual basis, those expenses exceed the tax revenue sought, and prove at least on a financial basis, that the public is receiving a greater benefit from the museum's activities than they would from that revenue. *J. McClain testimony; Pet'r Ex. 13; Pet'r Findings & Conclusions* at 17, 18.
33. Petitioner also claims disparate treatment. It bases this argument on the exemptions allowed for the Paramount Theatre, the Anderson Fine Arts Center, and the Madison County Historical Society. According to Petitioner, these properties are “very similar to” the subject property, but they get 100% exemption from property tax. *Pet'r Findings & Conclusions* at 30-33.
34. According to Petitioner, the primary use of the Paramount Theatre is an event center and ballroom. Among other events, it hosts concerts, plays, weddings, receptions, and high school proms. Petitioner contends that use is similar to the Officers' Club. The Paramount charges higher rent and is booked year-round. The Paramount has a

charitable exemption. *M. McClain testimony; Pet'r Ex. 20; Pet'r Findings & Conclusions* at 31.

35. According to Petitioner, the Anderson Fine Arts Center has an educational exemption. It is predominantly used as an art museum—it displays art year-round with both guided tours and self-guided tours. It also is available for weddings, receptions, and other events. And the Fine Arts Center supplements its income with a frame shop as well as having workshops for children. *M. McClain testimony; Pet'r Ex. 20; Pet'r Findings & Conclusions* at 31, 32.
36. The Madison County Historical Society also has an exemption. Its primary use is displaying historical items related to Madison County. Some of the displays at the Historical Society actually are on loan from Petitioner. Similar to the McClain Museum, the Historical Society is open for tours three days per week and is free of charge. *M. McClain testimony; Pet'r Ex. 20; Pet'r Findings & Conclusions* at 32.
37. Finally, Petitioner contends that Respondent should be precluded from arguing that the use of the subject property is not educational because the State Board of Tax Commissioners allowed it an educational exemption for 1996. The use of this property has remained much the same. Therefore, Respondent should be collaterally estopped from arguing about an issue that was litigated previously. *J. McClain testimony; Pet'r Ex. 4; Pet'r Findings & Conclusions* at 27-30 (citing *Bartle v. Health Quest Realty VII*, 768 N.E.2d 912, 917 (Ind. App. Ct. 2002); *R.R. Donnelley & Sons Co., Inc. v. Union Twp. Assessor and Montgomery Co. Assessor*, Ind. Bd. of Tax Rev. Pet. Nos. 54-030-03-1-3-00001, *et. al* (September 8, 2008)).

SUMMARY OF RESPONDENT'S CASE

38. Respondent argues that Petitioner has not shown either an educational or charitable use. Therefore, all of the parcels and the personal property are 100% taxable. And even if some exempt use were determined, with so few visitors the museum does not generally exist for an exempt purpose. *Resp't Brief* at 1, 2, 13.

39. Respondent argues that these exemption applications should be denied because Petitioner did not show its activities significantly relieved the government of its educational burden. While Respondent admits it is not required that the use of the subject property duplicate a public school agenda, the Respondent argues the use must be related to a public school course in some significant way and the purportedly exempt use must also provide public benefit. *Resp't Brief* at 8, 9 (citing *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 222; *Trinity School of Natural Health, Inc.*, 799 N.E.2d at 1234).
40. In this case, Respondent argues that there is no evidence of an educational purpose. Here there are no lesson plans, no classrooms, and no activities similar to a classroom. According to Respondent, any on-site education that occurs is limited to discussion of the exhibits on the guided tours. Respondent points out that Mr. Krieg, Mr. McClain, and Ms. McClain, lack post-secondary education or training in history or education. Respondent claims that Mr. Krieg's extensive knowledge about the mechanical aspects of the vehicles on display does not relieve the government of any educational burden. And even if it did, not enough school-aged children visit the museum to make that relief material. Respondent argues that the museum is open only nine hours per week and most of the visitors appear to be hobbyists. *Resp't Brief* at 9-10 (citing *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 222; *State Bd. of Tax Comm'rs v. Professional Photographers of America, Inc.*, 268 N.E.2d 617 (Ind. App. Ct. 1971)).
41. Respondent also argues the use of the property is not charitable. Respondent claims that to qualify for a charitable exemption, the charitable benefits must outweigh the loss of tax revenue and that there must be evidence of relief of human want manifested by charitable acts different from everyday activities of man in general. According to Respondent, the fact that an organization donates money, or loses money, by itself does not make the use of a property charitable. Respondent further argues that the Board has previously rejected charitable exemption claims that relied on anecdotal evidence. *Resp't Brief* at 10-11 (citing *Indianapolis Elks Building Corp. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969); *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 221; *Fraternal Order of Eagles #3988, Inc. v. Morgan Cnty. Property Tax Assessment*

Bd. of Appeals, Ind. Bd. of Tax Rev. Pet. No. 55-005-04-2-8-00001 (December 15, 2006); *Marion Home Foundation v. Lake Cnty. Property Tax Assessment Bd. of Appeals*, Ind. Bd. of Tax Rev. Pet. No. 45-004-04-2-8-00003 (April 11, 2007).

42. Respondent contends that Petitioner has misinterpreted the meaning of “human want.” “Human want” in this context is not just a desire, but rather some sort of vital necessity. And Petitioner has admitted that the museum does not fulfill a need of society, but only provides something that is desired. *Resp’t Reply Brief* at 2 (citing *College Corner, L.P.*, 840 N.E.2d at 908).
43. According to Respondent, the testimony about visitors at the museum having positive experiences is anecdotal and de minimis. Respondent pointed out that Petitioner called no witnesses to explain the impact of the museum on their lives and only three veteran groups were specifically identified in the tour logs. *Resp’t Ex. F; Resp’t Brief* at 12 (citing *Indianapolis Elks Building Corp.*, 251 N.E.2d at 683).
44. Even if some uses qualified as exempt, Respondent contends that the subject property is not primarily used for those purposes. Furthermore, if the museum portion of the property were found to be used predominantly for an exempt purpose, such a determination would only support a partial exemption. *Resp’t Brief* at 13.
45. Respondent argues that the “predominant use” calculation is more complex than simply determining the percentage of the building that holds military equipment—the fact that Petitioner owns the entire property does not mean all of its activities are exempt. Respondent points out that the Board could determine only a portion of the property is used for an exempt purpose. *Resp’t Brief* at 13-14 (citing *Indiana Osteopathic Hospital, Inc. v. Dept. of Local Gov’t Fin.*, 818 N.E.2d 1009, 1019 (Ind. Tax Ct. 2004)).
46. Respondent maintains that the subject property is not predominantly used for an exempt purpose. Some parts of the property clearly are used for non-museum purposes. The Officers’ Club and the boat storage area are separate “revenue-generating ventures” that should be taxable. *Resp’t Brief* at 14.

47. The uses of some areas are not related to the museum at all. For instance, the “high rail” area contains at least two vehicles that belong to Mr. Krieg and are not part of the museum’s collection. That area is approximately 9,000 square feet. Another area, referred to as “museum parts and storage,” is approximately 18,000 square feet. Respondent contends that even if this area were partially used for museum-related purposes, Petitioner failed to show it was the predominant use. And some areas are not used at all. Respondent argues that all these parts of the subject property should be taxable. *Resp’t Brief* at 14-15; *Resp’t Exs. K, K5*.
48. The subject property includes several unimproved parcels, which Respondent also claims are not used for exempt purposes. These are parcels 48-08-36-400-076.000-019, 48-08-36-400-075.000-019, 48-08-36-400-514.000-019, 48-08-36-400-515.000-019, and 48-08-36-400-466.000-019. According to Respondent, these are either wooded parcels that serve no purpose, or they mainly are used as parking for the Officers’ Club. Respondent argues that the evidence fails to show if, or how often, these parcels are used for museum purposes. Accordingly, Respondent argues that these parcels are taxable and should not be exempt. *Resp’t Brief* at 15-16 (citing *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d at 854). Respondent’s Exhibits L1 and L2 (GIS maps) appear to show that the buildings purportedly housing the museum are only on two parcels, 48-08-36-400-073.000-019 and 48-08-36-400-074.000-019.
49. According to Respondent, other than money contributed by Mr. McClain, the boat storage and the Officers’ Club account for the vast majority of Petitioner’s income. Each year, those two sources account for at least \$15,000 of revenue and only about \$5,000 of revenue comes from museum tours. Even considering the significant annual contributions from Mr. McClain, the boat storage and Officers’ Club are far from merely “incidental.” Respondent argues that the fact that an organization operates with a deficit does not make it charitable. *Resp’t Brief* at 16-17 (citing *New Castle Lodge 147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm’rs*, 733 N.E.2d 36, 40 (Ind. Tax Ct. 2000)).

50. Respondent argues that the claim about disparate treatment is unsupported. The Tax Court has previously held that an exemption claim is “a fact sensitive inquiry; there are no bright-line tests.” Respondent contends a disparate treatment claim cannot apply to exemption claims. Even if it could, the properties that Petitioner compared itself to are not focused on military equipment or the winter storage of boats. Thus, they are not similar. *Resp’t Brief* at 17 (citing *Oaken Bucket Partners, LLC v. Hamilton Cnty. Property Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129, 1134 (Ind. Tax Ct. 2009); *Fraternal Order of Eagles #3988, Inc.*, (Ind. Bd. of Tax Rev. Pet. No. 55-005-04-2-8-00001 at 32).
51. Finally, Respondent argues that collateral estoppel does not apply in this case for three reasons. First, the addition of the Officers’ Club in 2000 means the subject property has changed since the 1996 appeal. Second, collateral estoppel applies only to issues that were actually litigated—and in the 1996 appeal the assessor simply stipulated that the property was used predominantly for an exempt purpose. The only issue litigated in 1996 was ownership. Third, with regard to exemption appeals, the Tax Court has held that each tax year stands alone, implying that collateral estoppel should not apply. *Resp’t Brief* at 17-18 (citing *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d at 853).

ANALYSIS

52. In Indiana, all tangible property is subject to taxation. Ind. Code § 6-1-1-2-1. But there is authority for exemptions. Ind. Const., Art. 10 §1. Pursuant to that authority, “Indiana provides property tax exemptions for certain types of property and for certain kinds of taxpayers. *See* IND. CODE ANN. § 6-1.1-1-6 (1989). ‘Generally, exemptions [from taxation] are granted when there is an expectation of a benefit which will inure to the public by reason of the exemption.’” *National Ass’n of Miniature Enthusiasts*, 671 N.E.2d at 220 (quoting *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d at 854). A specific exemption is provided for property that is “owned, occupied, and used by a person for educational ... or charitable purposes.” Ind. Code § 6-1.1-10-16.

53. Exemptions are strictly construed against the taxpayer and in favor of the taxation because an exemption relieves property from the obligation of bearing its fair share of the cost of government services. *Indianapolis Osteopathic Hosp., Inc.*, 818 N.E.2d at 1014. Therefore, the taxpayer bears the burden of proving it is entitled to the exemption it seeks. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
54. “Determining whether an exemption applies is a fact-sensitive inquiry.” *Hamilton Cnty. Assessor v. Duke*, 69 N.E.3d 567, 570 (Ind. Tax Ct. 2017) (citing *Hamilton Cnty. Assessor v. SPD Realty, LLC*, 9 N.E.3d 773, 777 (Ind. Tax Ct. 2014). “Thus, each and every exemption case ‘stand[s] on its own facts’ and, ultimately, how the parties present those facts.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). “Moreover, any ambiguity will be strictly construed in favor of taxation and against exemption.” *Duke*, 69 N.E.3d at 570 (citing *Hamilton Cnty. Prop. Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010)).³
55. Furthermore, the educational and charitable exemption in Ind. Code § 6-1.1-10-16 is subject to the “predominant use” test found in Ind. Code § 6-1.1-10-36.3. This requirement means that the taxpayer must not only demonstrate that it owns, occupies, and uses its property for an exempt purpose, but also that the exempt use is the predominant use. This test requires the subject property to be used or occupied for one or more of the exempt purposes during more than 50% of the time the property is used or occupied in the year that ends on the assessment date. The part of Ind. Code § 6-1.1-10-36.3(c) that pertains to educational and charitable exemption claims provides as follows:

³ Petitioner claimed exemption for personal property. Although there are photographs and some testimony in the record about items that might be the personal property to which the exemption claim applies, Petitioner failed to specifically identify what personal property was claimed to be exempt. The evidence and arguments presented in this case are insufficient for any meaningful analysis about the personal property claim. Therefore, our analysis of the “subject property” is confined to the real estate. We will not consider granting an exemption for personal property when it is not even clear what items are included. See *Johnson Cnty. Property Tax Assessment Bd. of Appeals v. KC Propco, LLC*, 28 N.E.3d 370, 374 (Ind. Tax Ct. 2015).

- (1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

- (3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under this section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.
- (4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

56. The clear language of Ind. Code § 6-1.1-10-36.3(c) allows both educational use and charitable use of the subject property to be considered together in determining whether exempt use is exclusive, predominant, or less than predominant. The consequence of that classification, of course, is complete exemption only when the exempt use is exclusive, i.e., 100%. Otherwise, the answer is a partial exemption or no exemption at all.

57. Here, Petitioner claimed the use of the subject property was exclusively exempt as a museum, but the evidence showed that space was rented for boat storage, yellow-book storage, and events like weddings and banquets held in the Officers' Club. Additionally, there is little evidence of how the undeveloped land was used at all, which may include entire parcels. We are not convinced by Petitioner's conclusory characterization of various other uses of the property as "incidental." Rather, it appears that the land and buildings are much larger than necessary to support the museum, and large portions of the property were put to convenient uses unrelated to a museum. This property, therefore, does not qualify for 100% exemption.

58. In cases where a property has multiple uses, some exempt and some not exempt, “a failure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim for exemption.” *Duke*, 69 N.E.3d at 571. More specifically, a taxpayer fails to meet its burden under the predominant use standard by not offering a log of the time the facility was used for exempt purposes versus total time used. *New Castle Lodge #147*, 765 N.E.2d at 1264. The record contains no such time log for the McClain Museum. Therefore, even though Petitioner occasionally “donates” the property for something such as police dog training or Petitioner “donates” the Officers’ Club for some charitable event, Petitioner failed to provide sufficient evidence to allow those uses to be figured into the percentage of exempt use versus total use (even if we assume *arguendo* that they could be considered in the exempt use category). Furthermore, the documentation and specificity provided by Petitioner in this case are not sufficient to allow any kind of partial exemption, even if some part of the property might sometimes be used for an exempt purpose.
59. Turning to the merits of the case, the most analogous situation to the case before us and the most relevant analysis is in *National Ass’n of Miniature Enthusiasts*, 671 N.E.2d 218. The Miniature Enthusiasts operated a museum for the public to enhance the public’s knowledge about miniatures. It was recognized as a charitable organization for federal income tax purposes under IRC section 501(c) (3). The articles of incorporation state that it is organized and operated exclusively for charitable and educational purposes. But even viewing the facts in a light most favorable to the Miniature Enthusiasts (because that case was before the Tax Court on summary judgment), the Tax Court found the museum, library, and workshops did not “relieve human want and suffering” even though they were “a noble endeavor.” Thus, the miniatures museum was not entitled to a property tax exemption based on purported charitable use: “declaring itself a charity does not make ... activities and endeavors the sort the law recognizes as charitable and therefore entitled to tax exemption.” *National Ass’n of Miniature Enthusiasts*, 671 N.E.2d at 221 (citing *Indianapolis Elks Bldg. Corp.*, 251 N.E.2d at 683). We reach the same conclusion about the McClain Museum.

60. The McClain Museum is named after the owner of the original collection, and it appears that he and his daughter run the place as they see fit. When Mr. McClain's interest in the museum waned, he removed *his* "collection" and "went to Florida." The evidence is very sparse as to the ownership of the remaining exhibits. While the facilities are regularly open to the public, it is predominantly used by a select number of persons who utilize the facility for storing and maintaining equipment. The record does not indicate significant efforts to advertise to the public or increase the number of visitors. In fact, visitors are of such secondary importance that they are barely tracked at all. It is not clear how often the "reenactments" occur, or if they even occur on the subject property. Mr. Krieg provides a guided tour about once a month.
61. We find *Miniature Enthusiasts* controlling. The Tax Court noted that "[a]ny educational training provided through [the Miniature Enthusiasts'] museum, library, workshops, local clubs, and houseparties are merely incidental to its recreational and hobby activities." *National Ass'n of Miniature Enthusiasts*, 671 N.E.2d at 222. The exhibits, tours, library, and workshops were insufficient in that case, as they are here. We conclude that more than anything the McClain Museum is focused on Mr. McClain's hobby, collecting items related to military history. The totality of the evidence shows that whatever public benefits might result are merely incidental to that main focus. Therefore, the exemption must be denied.
62. We do not suggest that military history should be equated in significance with a hobby like making doll houses. We fully support the noble undertaking of historic preservation, especially in regard to a discipline as important as the study of military history. We see the educational value of bringing history to life through "reenactments." But any collector who painstakingly preserves, restores, and displays antiques could be said to perform a noble act that benefits future generations. That alone is insufficient for an exemption. A property must be used for the public's benefit, and the facts reveal that the public is secondary in the operations of the McClain Museum.
63. To the extent that the McClain Museum could be considered educational to the "volunteers" who use the property rather than the public, the scope of the educational

exemption is too narrow to grant an exemption under these facts. A taxpayer must demonstrate an educational use that confers “a public benefit justifying the loss in tax revenue.” *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1265 (Ind. 2006). A public benefit is sufficient to justify an educational exemption when the courses at issue correlate to those found in tax-supported schools and “to some extent” relieve the State’s burdens. *Trinity School of Natural Health, Inc.*, 799 N.E.2d at 1238. The courses need not be identical to those taught in tax-supported schools. *Id.* A determining factor is whether the educational activities benefit the public, rather than the presenter. *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266.

64. The McClain Museum is not a school. It does not offer courses on historic preservation or military history. Petitioner has made no showing of “instruction and training equivalent to that provided by tax-supported institutions of higher learning and public schools.” *National Ass’n of Miniature Enthusiasts*, 671 N.E.2d at 222. Petitioner offered no evidence of any type of curriculum or teaching plan. Because the property is predominantly used for storing and maintaining private collections, Petitioner is not entitled to an educational exemption.
65. Petitioner’s claim for an exemption based on charitable use must also fail. In order to prove charitable use, a taxpayer must demonstrate that (1) through its use of the property, there is “evidence of relief of human want...manifested by obviously charitable acts different from the everyday purposes and activities of man in general,” and that (2) there is a present benefit to the general public sufficient to justify the loss of tax revenue. *See Indianapolis Elks Bldg. Corp.*, 251 N.E.2d at 683; *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d 854. A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P.*, 840 N.E.2d at 908.
66. Petitioner misinterprets the definition of “human want” in order to claim charitable use. In the context of property tax exemption, “human want” is not just human desire, but a

need based on lack of a vital necessity. “Charity” is not explicitly defined by statute, but the Tax Court has defined it in part as an attempt to advance mankind in general, or those in *need* of advancement and benefit in particular. See *Raintree Friends Housing, Inc. v. State Bd. of Tax Comm’rs*, 667 N.E.2d 810, 813-14 (Ind. Tax Ct. 1996). Petitioner’s efforts in regard to veterans are certainly charitable and relieve human want, but these activities are small and incidental relative to the overall use of the property.

67. The general basis for property tax exemptions also supports our conclusion that the subject property should not be allowed any exemption. As previously noted, these exemptions are granted based on the expectation that public benefits will offset the loss of tax revenue. After considering all the evidence and arguments that were presented, we are not convinced that this property provides enough public benefits to justify an exemption.

68. Petitioner has also failed to present sufficient evidence to prove disparate treatment. Petitioner offered only conclusory testimony about the Paramount Theatre, the Anderson Fine Arts Center, and the Madison County Historical Society. Even if we accept (*arguendo*) the proposition that those other properties have been allowed some sort of property tax exemption, Petitioner provided hardly any facts or analysis about the similarities and differences between those properties/uses and the subject property/uses. Most of Petitioner’s argument related to those property’s incidental uses, but the direct questions are not answered. For example, do any of those other properties rent space to store boats? Or if the other properties have event centers, the record contains no substantial evidence about how they compare to the Officers’ Club at the McClain Museum. Petitioner also pointed to “the children’s museums in Muncie and Indianapolis, and Conner Prairie.” As previously noted, determining exemption claims are fact sensitive inquiries—each and every exemption case stands on its own facts. Under these circumstances it is impossible to draw any legitimate conclusion about the subject property based upon these attempted comparisons. Petitioner has not proven that its exemption claim should be granted based on its claim of disparate treatment.

69. Nor has Petitioner established that its exemption must be allowed based on collateral estoppel. Collateral estoppel “bars the subsequent litigation of a fact or issue which was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit,” the “former adjudication will only be conclusive as to those issues which are *actually litigated and determined therein.*” *Bartle*, 768 N.E.2d at 917 (emphasis added).
70. Petitioner offered no evidence that the issue of whether its use of the subject property qualifies for charitable or educational exemption was ever actually litigated. To the contrary, Mr. McClain testified that the parties stipulated to the charitable or educational use in the 1996 appeal and litigated only whether the museum’s “ownership” allowed it to qualify for exemption. Petitioner failed to offer any facts or substantial authority that such a stipulation about the use of this property is binding almost twenty years later.
71. Even if the issue had been litigated in 1996, we know the facts have changed since then—the Officers’ Club was not established until after 1996. And the record contains little, if any, substantial evidence to support a conclusion that all the pertinent facts about usage in 1996 would be the same in 2014. For example, we do not know whether renting boat storage was taking place back then.
72. Furthermore, it is well-settled that each assessment and tax year stand alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. Thus, evidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). The fact that a property was exempt nearly twenty years ago, does not prove it still qualifies for exemption.
73. Petitioner’s reliance on the Board’s finding in *R.R. Donnelley & Sons Co., Inc.* on this point is misguided. That case was an assessment appeal, decided when consecutive tax years at issue were based on a valuation date of January 1, 1999, and before annual “trending” adjustments were considered. Thus, to change an assessment that had previously been litigated, an assessor had to show that there was a change to the property

from one year to the next. *Donnelley* provides no substantial support for Petitioner's point. Once again, the evaluation of an exemption appeal is a fact-sensitive inquiry. The facts can and often do change from year to year. Collateral estoppel does not apply here.

74. Petitioner has not proven that the subject property is entitled to any property tax exemption for 2014.

SUMMARY OF FINAL DETERMINATION

75. The Board finds in favor of Respondent. The subject property is 100% taxable for 2014.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

LIST OF PETITION NUMBERS AND PARCEL NUMBERS

Petition Number	Parcel Number
48-019-14-2-8-00001	48-000771-019
48-019-14-2-8-00003	48-08-36-400-515.000-019
48-019-14-2-8-00004	48-08-36-400-514.000-019
48-019-14-2-8-00005	48-08-36-400-077.000-019
48-019-14-2-8-00006	48-08-36-400-466.000-019
48-019-14-2-8-00007	48-08-36-400-076.000-019
48-019-14-2-8-00008	48-08-36-400-075.000-019
48-019-14-2-8-00009	48-08-36-400-073.000-019
48-019-14-2-8-00010	48-08-36-400-074.000-019
48-029-14-2-8-00001	48-07-31-300-024.000-029
48-029-14-2-8-00002	48-07-31-300-028.000-029